

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

United States of America)	Cr. No. 6:04-3-HMH
)	
v.)	
)	OPINION AND ORDER
Francisco De La Cruz-Ortiz,)	
)	
Movant.)	

This matter is before the court on Francisco De La Cruz-Ortiz’s (“Cruz-Ortiz”) motion for leave to appeal pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure. Rule 4(b)(4) provides that “[u]pon a finding of excusable neglect or good cause, the district court may—before or after the time has expired . . . —extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration otherwise prescribed by this Rule 4(b).” Fed. R. App. P. 4(b)(4). Rule 4(b) prescribes in relevant part that “[i]n a criminal case, a defendant’s notice must be filed in the district court within 10 days after . . . the entry of . . . the judgment.” Fed. R. App. P. 4(b)(1)(A)(i).

The judgment was entered on May 9, 2005. Cruz-Ortiz filed a letter, indicating his intent to appeal, on June 3, 2005. Cruz-Ortiz states that he was unable to meet the ten day deadline under Rule 4(b) “because the notification of judgment was sent to FCI . . . where I was previously housed at.” (Docket No. 21.) “I was subsequently transferred to FCI Edgefield, hence the delay in the delivery of notification by the courts [and] . . . my response.” (Id.)

For the reasons set forth in Cruz-Ortiz’s June 3, 2005 letter, this court finds that, for excusable neglect and good cause, the time for Cruz-Ortiz to appeal shall be extended under

Rule 4(b)(4). Cruz-Ortiz's June 3, 2005 letter, moreover, is within the time prescribed by Rule 4(b)(4) (i.e., within thirty days from 10 days after the entry of judgment or within thirty days from May 19, 2005).

Therefore, it is

ORDERED that De La Cruz-Ortiz's motion for leave to appeal pursuant to Rule 4(b)(4) of the Federal Rules of Appellate procedure is granted.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
July 26, 2005

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified of his right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.